

A **MTD Infraperdana Bhd**
(formerly known as Dewina Bhd) (No 2)

HIGH COURT (KUALA LUMPUR) — ORIGINATING PETITION NO D4-26-21
OF 2003

B ABDUL MALIK ISHAK J
23 AUGUST 2003

Companies and Corporations — Shares — Capital reduction — Warrants convertible to shares issued — Whether warrant holders required to register as shareholders before order permitting reduction of share capital allowed — Whether order specifying the amount of share capital as altered, etc ought to be put off until such registration

C The petitioner had sought confirmation of a resolution for reduction of its share capital. The court had previously made an order dispensing with the need to hold an enquiry as to creditors. The petitioner had, however, issued warrants which could be converted into shares at any time.

D **Held**, allowing the application:

(1) Without the sanction of the court, a company cannot make any payment in reduction of its capital not being expenditure upon and reasonably incidental to its objects. The power against reduction was general in nature and extends to every possible mode (see para 9).

E (2) While the Act prohibits sanctioning of the reduction of capital unless certain prescribed conditions are observed and fulfilled, there is no limitation of the power of the court to confirm the reduction except that it must first be satisfied that all the creditors entitled to object to the reduction have either consented or had been paid or had been secured. In exercising its power of reduction, the court will also be very flexible (see paras 9–10).

F (3) The court has to consider the interests of the creditors, the shareholders and the public at large. Where, as here, these interests are protected, the court would sanction the reduction of capital (see para 4); *RePreston Motors Pty Ltd* (1957) VR 111 and *Re Chelmsford Land Company Ltd* (1904) WN 106 followed.

G (4) Where the share capital of a company is altered by an order of the court confirming the reduction, it is now the usual practice of the court to approve a minute showing, the amount of such share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration of the minute deemed to be paid up on each share. Where the reduction is followed by a consolidation and other averments, the form of the minute should state that the capital had been reduced 'by a special resolution confirmed by an order of the High Court of Justice'. Any cancellation or reduction of the share premium account which forms part of the reduction was not to be referred to in the minute (see para 8); *Re North Pole Ice Co Ltd and Reduced* (1924) WN 131 and *Re Dampney & Co Ltd and Reduced* (1924) 68 Sol Jo 718 followed;

H

I

ReParinga Mining and Exploration Co Ltd [1957] 3 All ER 424, [1957] 1 WLR 1143 referred.

- (5) The petitioner was required to fix an entitlement date by which the warrant holders were to register themselves as shareholders in order to participate in the reduction of capital. Before an order is made in terms thereof, there is no entitlement to a reduction of capital. Thus, notwithstanding that an order in terms of the reduction was allowed, the court gave another date for the hearing of the prayer for the order specifying the amount of share capital of as altered, the number of shares into which it is to be divided and the fully paid up value of each share (see paras 17–18); *Re Chelmsford Land Company Ltd* (1904) WN 106 followed.

[Bahasa Malaysia summary]

Pempetisyen telah memohon pengesahan satu resolusi terhadap pengurangan modal sahamnya. Mahkamah sebelum ini telah membuat satu perintah di mana tidak perlu diadakan satu siasatan ke atas pemiutang-pemiutang. Pempetisyen telah, bagaimanapun, mengeluarkan waran-waran yang boleh diubahsuai menjadi saham-saham pada bila-bila masa.

Diputuskan, membenarkan permohonan tersebut:

- (1) Tanpa sanksi mahkamah, sebuah syarikat tidak boleh membuat apa-apa pengurangan bayaran modalnya yang bukan perbelanjaan dan yang dikenakan ke atas objek-objeknya. Kuasa terhadap pengurangan bersifat umum dan meliputi setiap cara yang mungkin (lihat perenggan 9).
- (2) Meskipun Akta melarang pensanksian pengurangan modal kecuali syarat-syarat tertentu diteliti dan dipenuhi, tiada batasan terhadap kuasa mahkamah untuk mengesahkan pengurangan tersebut kecuali ia terlebih dahulu berpuas hati bahawa kesemua pemiutang yang berhak membantah terhadap pengurangan tersebut telahpun sama ada bersetuju atau telah dibayar atau telah diberi jaminana. Dalam menggunakan kuasa pengurangannya, mahkamah juga akan berlaku fleksibel (lihat perenggan-perenggan 9–10).
- (3) Mahkamah perlu menimbangkan kepentingan pemiutang-pemiutang, pemegang-pemegang saham dan orang awam pada keseluruhannya. Di mana, seperti di sini, kepentingan-kepentingan tersebut dilindungi, mahkamah akan mensanksikan pengurangan modal tersebut (lihat perenggan 4); *Re Preston Motors Pty Ltd* (1957) VR 111 dan *Re Chelmsford Land Company Ltd* (1904) WN 106 diikuti.
- (4) Di mana modal saham sebuah syarikat dipinda oleh perintah mahkamah bagi mengesahkan pengurangan, ia adalah amalan biasa sekarang untuk mahkamah meluluskan minit yang menunjukkan, jumlah modal saham tersebut, dan jumlah, jika ada, pada tarikh pendaftaran minit tersebut yang dianggap telah dibayar untuk setiap saham. Di mana pengurangan diikuti dengan satu gabungan dan penegasan lain, bentuk minit tersebut hendaklah menyatakan bahawa

- A** modal tersebut telah dikurangkan 'by a special resolution confirmed by an order of the High Court of Justice'. Apa-apa pembatalan atau pengurangan akaun premium saham yang membentuk sebahagian daripada pengurangan tersebut tidak dirujuk dalam minit tersebut (see para 8); *Re North Pole Ice Co Ltd and Reduced* (1924) WN 131 dan *Re Dampney & Co Ltd and Reduced* (1924) 68 Sol Jo 718 diikuti;
- B** *Re Paringa Mining and Exploration Co Ltd* [1957] 3 All ER 424, [1957] 1 WLR 1143 dirujuk.
- (5) Pempetisyen dikehendaki untuk menetapkan tarikh kelayakan yang mewarankan pemegang-pemegang mendaftar diri mereka sebagai pemegang saham bagi tujuan terlibat dalam pengurangan modal.
- C** Sebelum perintah dibuat mengikut terma tersebut, tiada kelayakan terhadap pengurangan modal. Oleh itu, meskipun perintah mengikut terma pengurangan dibenarkan, mahkamah memberikan tarikh lain untuk perbicaraan bagi permohonan untuk perintah menetapkan jumlah modal saham seperti yang dipinda, jumlah saham yang mana perlu dibahagikan dan nilai berbayar sepenuhnya setiap saham (lihat perenggan-perenggan 17–18); *Re Chelmsford Land Company Ltd* (1904) WN 106 diikuti.]
- D**

Notes

- E** For cases on capital reduction, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 717–714.

Cases referred to

- F** *Britannia Mills Co, Huddersfield, Re* (1888) WN 103 (refd)
British and American Trustee and Finance Corp v Couper (1894) AC 399 (refd)
Brown Sons & Co, Re (1931) SC 701 (refd)
Chelmsford Land Company Ltd, Re (1904) WN 106 (folld)
Credit Assurance and Guarantee Corp (1902) 2 Ch 601 (refd)
Dampney & Co Ltd and Reduced, Re (1924) 68 Sol Jo 718 (folld)
David Bell Ltd (1954) SC 33 (refd)
- G** *Doloswella Rubber and Tea Estates, Re* (1917) 1 Ch 213 (refd)
Fore Street Warehouse Co, Re (1888) WN 155 (refd)
Hoare & Co, Re (1910) WN 87 (refd)
International Conversion Trust Ltd, Re (1892) WN 100 (refd)
Louisiana and Southern States Real Estate and Mortgage Co, Re (1909) 2 Ch 552 (refd)
- H** *North Pole Ice Co Ltd and Reduced, Re* (1924) WN 131 (folld)
Paringa Mining and Exploration Co Ltd, Re [1957] 3 All ER 424, [1957] 1 WLR 1143 (refd)
Phoebe Gold Mining Co, Re (1900) WN 182 (refd)
Poole v National Bank of China (1907) AC 229 (refd)
Preston Motors Pty Ltd, Re (1957) VR 111 (folld)
Scottish Vulcanite Co Ltd, Re (1894) 21 R (Ct of Sess) 752 (refd)
- I** *Stevenson Anderson & Co Ltd, Re* (1951) SC 346 (refd)
Thomas de la Rue & Co, Re 1911) 2 Ch 361 (refd)
Trevor v Whitworth (1887) 12 App Cas 409 (refd)

Watson, Walker and Quickfall, Re (1898) WN 69 (refd)
West Cumberland Iron and Steel Co, Re (1888) 58 LT 152 (refd)
Westburn Sugar Refineries, Ltd, Ex parte [1951] AC 625; [1951] 1 All ER 881 (refd)

A

Legislation referred to

B

Companies Act 1965 s 64(2), (3)

Lambert Rasa-Ratnam (Lee Hishammuddin) for the petitioner.

Abdul Malik Ishak J:

C

Introduction

[1] As scheduled, I heard encl 1 on 20 August 2003. Now, encl 1 is a petition issued seeking confirmation under s 64 of the Companies Act 1965 ('the Act') of a resolution for the reduction of the share capital of the petitioner. On 30 June 2003, I made an order pursuant to s 64(3) of the Act dispensing with the need to hold an enquiry as to creditors under s 64(2) thereof. I too directed that advertisement of the petition be made at least one week before the hearing date. A written judgment has since been circulated and it has not been reported as yet ('the first judgment').

D

[2] There are three affidavits that need to be considered. The affidavits of Dato' Azmil Khalili bin Khalid ('Dato' Azmil') affirmed on 11 April 2003, 11 June 2003 and 26 June 2003 respectively. In addition to that, two affidavits of Foo Joon Liang affirmed on 14 July 2003 and 7 August 2003 showing and alluding to the advertisements of the original hearing date and this adjourned hearing date must be referred to.

E

[3] In encl 1, the petitioner by way of para 10 sought for the following prayers:

F

10 The Petitioner, in conclusion, respectfully prays for the following:

- (1) that the proposed reduction in the share capital of the Petitioner proposed through a Special Resolution dated 21st March 2003 as stated below:

G

'SPECIAL RESOLUTION 1 — PROPOSED CAPITAL REDUCTION

That, subject to the confirmation by Court and approvals of any other from relevant authorities being obtained and subject to the passing of the Ordinary Resolution 1 below, the issued and paid-up share capital of DEWINA of up to RM1,176,409,090 comprising 1,176,409,090 ordinary shares of RM1.00 each (on assumption that all the existing 28,500,000 warrants are exercised) be reduced to up to RM941,127,272 comprising 1,176,409,090 ordinary shares of 80 sen each representing a capital reduction of 20 sen for every existing ordinary share of RM1.00 each.

H

AND THAT the DIRECTORS OF DEWINA be and hereby further authorized to give effect to the aforesaid Proposed Capital Reduction with full powers to do such acts and things as the Directors may deem fit and expedient in the best interests of DEWINA and to assent to any conditions, modifications,

I

- A** variations and/or amendments as may be imposed by the relevant authorities and to take steps and to enter into all such agreements, arrangements, undertakings, indemnities, transfers, assignments and guarantees with any party or parties and to carry out any other matters as may be required to implement, finalize and give full effect to the Proposed Capital Reduction.'
- B** Be confirmed by this Court pursuant to section 64 of the Companies Act 1965;
- (2) that an order be made specifying the amount of share capital of MTD Infraperdana Bhd as altered, the number of shares into which it is to be divided and the fully paid up value of each share;
- C** (3) that all orders that are necessary and appropriate are made and given, in particular but not limited to the following:
- (i) that an office copy of the said Order be registered with the Companies Commission of Malaysia; and
- (ii) that within fourteen (14) days after the issuance of Form 29 by the Companies Commission of Malaysia, the Petitioner advertise once in an English daily newspaper which is circulated within the Federation, a notice of:
- D** (a) the terms of the Order; and
- (b) the registration of the Order with the Companies Commission of Malaysia.
- E** (4) any other Orders that the Court deems fit and necessary.
- (5) that the Petitioner be at liberty to apply.

The law governing the application in encl 1

- F** **[4]** In an application of this nature, the court has to consider the interests of the creditors, the shareholders and the public at large. If these interests have been protected, then the court will sanction the reduction of capital. In *Ex parte Westburn Sugar Refineries, Ltd* [1951] AC 625; [1951] 1 All ER 881, the House of Lords with a coram of Lord Porter, Lord Normand, Lord Oaksey, Lord Reid and Lord Radcliffe had occasion to consider the issue of the reduction of share capital. Lord Reid, writing a separate judgment, had this to say of the subject matter (see pp 885–886):
- G**

- H** What then is the duty of the court in considering a matter of this kind? In the first place, the interests of creditors must be safeguarded, but here that has been done. Secondly, the interests of shareholders may have to be considered, but in this case there has been no opposition by any shareholder at any time and it is difficult to see how there could be any prejudice to any single shareholder. Thirdly, there is the public interest to consider. That this is a relevant consideration was clearly recognized by LORD MACNAGHTEN in *Poole v. National Bank of China, Ltd*, [1907] AC 229; 76 LJ Ch 458; 96 LT 889; 9 Digest 149, 842. I would not be disposed, by attempting to define the public interest, to narrow in any way the discretion of the court in any future case, but in a case like the present I think that it is right to scrutinize the facts somewhat closely, having in mind the position of those who may, in future, form connections with the company as creditors or shareholders. It appears to me to be proper to consider what assets the company will retain if the proposed reduction of capital is confirmed. In the present case
- I**

the assets to be distributed, taken at their real value, form only a comparatively small part of the total assets of the company. The value of the assets to be distributed has been estimated at 197,768 pounds, and the value of the assets to be retained by the company as shown in the balance sheet [as at Oct 1, 1949] exceeds 1,400,000 pounds. It seems clear that the true value of these assets cannot be substantially less than that amount. The total capital of the company before reduction is 609,000 pounds and liabilities to creditors and others did not exceed 500,000 pounds at the time of the last balance sheet. In my opinion, these facts are amply sufficient to remove any apprehension that the future conduct of the company may be adversely affected by confirmation of the present proposal.

It has been said that there are other matters concerning the public interest to be taken into account in this case. LORD CARMONT took the view that there is or may be an ulterior object behind the present petition, *viz.*, to avoid in part the consequences of possible future legislation. The fact that the appellants may have such an ulterior object may be a good reason for making quite certain that the existing law is complied with in every respect, but it cannot, in my judgment, be by itself a ground for dismissing the petition. The petition must be judged by the law as it exists today. Finally, I should notice the fear expressed by the Lord President (LORD COOPER) that the decision of this case in favour of the appellants may 'open a wide door to the most dangerous possibilities'. The case does not strike me in that way. The powers of the court to deal with cases of this kind are wide and are, I think, adequate to enable new difficulties which may emerge to be dealt with justly when they arise.

[5] In *Re Preston Motors Pty Ltd* (1957) VR 111, the petitioner petitioned the court for its confirmation of a resolution passed by the company to reduce the share capital of the company as set out in the resolution. 'The value of the assets of the company were ten times the face value of the issued shares and, if the proposed repayments were carried out, the remaining assets would be far more than sufficient to repay shareholders the capital paid up on all the issued shares and to meet all the liabilities of the company. Lowe J at p 112 of the report aptly said:

It is established on the highest authority that payment to shareholders by way of return of capital may be in kind and not in cash and that there need be no exact equivalence between the nominal value of the shares repaid and the value of the assets distributed (*Ex parte Westburn Sugar Refineries Ltd* [1951] AC 625, and see *In re Blackburn Cool Stores Pty Ltd*, [1939] VLR 351). This being so, the effect of such a disparity as exists in this case is, I think, no more than to call for the closest scrutiny by the Court to see that there is no prejudice in the proposal to the interests of those whose interests must be considered and that it will not work unjustly or inequitably. In the present case the creditors either consent to the proposal or are amply protected. The shareholders have agreed to the proposal not only the required statutory majority but, with one exception (as counsel informed me), unanimously, and no shareholder has dissented from the proposal. The persons possibly interested are confined to the shareholders, the creditors and the public. What interest of the public can be affected by the proposal? So far as I can see, only that there shall be sufficient assets to protect the remaining share capital. The petition states (and the statement is verified) that the value of the assets of the company is more than ten times the face value of the issued shares of the company and, if the proposed repayment is carried out, the remaining assets will be far more than sufficient both to repay shareholders the capital paid up on all the issued shares and all the liabilities of the company. As Lord Reid

- A** said in the *Westburn Case*, supra, at p. 630: 'The material matter is not the value of the investments which the company proposes to transfer, but the value of those assets which it will retain.' Once the reduction is confirmed, the minute will inform anyone who chooses to search of the new capital organisation of the company, and that minute will be advertised. This information, together with a statement of the reasons which have led to the reduction of capital, will sufficiently protect any interest the public has.
- B**

I therefore dispense with the necessity for settling a list of creditors and deal with the matter forthwith.

- C** I confirm the reduction set out in the resolution in the petition. I approve of the minute as submitted. I direct that the notice of registration of the minute be made within fourteen days in the *Government Gazette* and in a daily newspaper circulating throughout Victoria, and that a notice initialled by me setting out the reasons for reduction be similarly advertised. Order to be passed and entered forthwith.

Order accordingly.

- D** [6] In *Re Chelmsford Land Company, Limited* (1904) WN 106, the court was concerned with the petition for reduction of capital. In that case, the company was incorporated in 1880 with a capital of 10,000 L divided into 500 shares of 20 L each, the whole of which had been subscribed and paid up with the exception of one call of 20 L. The capital was in excess of the wants of the company for the business they were now carrying on, and in September 1903, they passed a resolution that the company should be at liberty and have power to reduce its capital. By special resolution passed on 19 October, and confirmed on 6 November 1903, it was resolved, 'That the capital of the Chelmsford Land Company be reduced from 10,000 L to 6000 L, and that such reduction be effected by repayment of share capital to the shareholders.' The company had no debts. It was proposed to register a minute in the following form: 'Minute approved by the court. The capital of the Chelmsford Land Company, Limited, is from henceforth 6000 L divided into 500 shares of 12 L each, reduced from 10,000 L divided into 500 shares of 20 L each, and such reduction is to be effected by repaying to the members the sum of 8 L on every fully paid share held by them respectively, being capital in excess of the wants of the company, and by reducing each of such shares of the company from 20 L to 12 L' The company by their petition asked that the special resolution might be confirmed and the minute approved. Buckley J, said that the minute could not be approved in that form till the money was repaid. The order for reduction should be made first, and then followed by another application for approval of the minute. Buckley J, also said that he would confirm the special resolution for reduction of capital, and would approve a minute in the form that, 'the capital of the company is from henceforth 6000 L divided into 500 shares of 12 L each, instead of 10,000 L divided into 500 shares of 20 L each,' upon the company producing to the registrar an affidavit that the repayments had been made.
- E**
- F**
- G**
- H**

- I** [7] Now, as I see it, the principle of law as enunciated in the case of *Re Chelmsford Land Company, Ltd* may be stated in this way. That where the court sanctioned a reduction by way of repayment of capital, and, on a subsequent application after the repayment had been effected, approved a minute showing the position of the capital as it was after repayment.

[8] It is now the usual practice of the court to approve a minute showing, with respect to the share capital of the company as altered by the order of the court confirming the reduction, the amount of such share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration of the minute deemed to be paid up on each share (see *Re West Cumberland Iron and Steel Co* (1888) 58 LT 152; *Re Britannia Mills Co, Huddersfield* (1888) WN 103; and *Re International Conversion Trust Ltd* (1892) WN 100). And when the reduction was followed by consolidation and other averments, the form of the minute should state that the capital had been reduced, 'by a special resolution confirmed by an order of the High Court of Justice' and this principle of law was enunciated in the case of *Re North Pole Ice Co Ltd and Reduced* (1924) WN 131 which was explained further by the case of *Re Dampney & Co Ltd and Reduced* (1924) 68 Sol Jo 718. It is also germane to mention that any cancellation or reduction of the share premium account which forms part of the reduction should not be referred to in the minute (see *Re Paringa Mining and Exploration Co Ltd* [1957] 3 All ER 424, [1957] 1 WLR 1143).

[9] In sanctioning the reduction of capital under certain conditions, the Act impliedly prohibits it unless the prescribed conditions are observed and fulfilled (see *Trevor v Whitworth* (1887) 12 App Cas 409, at p 437). Without the sanction of the court, a company cannot make any payment in reduction of its capital not being expenditure upon and reasonably incidental to its objects. The power of the court is unlimited. There is no limitation of the power of the court to confirm the reduction except that it must first be satisfied that all the creditors entitled to object to the reduction have either consented or had been paid or had been secured (see *British and American Trustee and Finance Corp v Couper* (1894) AC 399, at p 403; *Re Credit Assurance and Guarantee Corp* (1902) 2 Ch 601; *Poole v National Bank of China* (1907) AC 229; *Re Louisiana and Southern States Real Estate and Mortgage Co* (1909) 2 Ch 552; and *Re Thomas de la Rue & Co* (1911) 2 Ch 361). It must be borne in mind that the power of reduction is very general in nature and it extends to every possible mode. In *Re Phoebe Gold Mining Co* (1900) WN 182, an unusual form of reduction took place where the resolutions had been passed unanimously and the petition was not opposed. The unusualness can also be seen in the case of *Re Hoare & Co* (1910) WN 87 where participation certificates were issued to shareholders and where part of the paid-up capital and arrears of dividend had been cancelled.

[10] In exercising its power of reduction, the court will also be very flexible. In *Re Doloswella Rubber and Tea Estates* (1917) 1 Ch 213, the court was concerned about the surrender for re-issue of unpaid shares obtained by subdividing partly paid shares into shares of smaller amount and attributing the whole of the amounts paid up to the shares not to be surrendered and yet the court allowed the reduction. In the following cases, namely:

- (a) *Re Fore Street Warehouse Co* (1888) WN 155;
- (b) *Re Watson, Walker and Quickfall* (1898) WN 69;
- (c) *Re Scottish Vulcanite Co Ltd* (1894) 21 R (Ct of Sess) 752;
- (d) *Re Brown Sons & Co* (1931) SC 701; and
- (e) *Re Stevenson Anderson & Co Ltd* (1951) SC 346,

A

B

C

D

E

F

G

H

I

A [11] the courts there held that the repayments of paid-up capital which were in excess of the wants of the company upon the footing that the amounts repaid shall be liable to recall would entitle the courts to grant the reductions.

B [12] In exercising its discretion, the court is always concerned to see that the reduction is fair and equitable. In *British and American Trustee and Finance Corp v Couper* (HL), Lord Herschell LC remarked at p 406 that no scheme ought to be confirmed unless the court was satisfied that it will not work unjustly or inequitably. It seemed that the court would not be concerned to consider the motive for the reduction. Motive appears to be of less significant. Thus, it would be irrelevant if the motive was to avoid the effects of a threatened nationalisation as reflected in the case of *Ex parte Westburn Sugar Refineries, Ltd*. The motive to distribute accumulated profits in such a way as to avoid or diminish liability to tax was considered to be an irrelevant consideration in the case of *David Bell Ltd* (1954) SC 33. The courts in these cases just cited confirmed the reduction exercises.

D [13] With these authorities in mind, I must now consider the merits of the application in encl 1.

Merits of the application

E [14] I must reiterate that the interests of the creditors have been considered when I granted the order on 30 June 2003. In regard to the shareholders, it must be borne in mind that there were no opposition from anyone of them. There could not be any prejudice occasioned to all the shareholders because they have all been treated equally. In regard to the public interest, I need to ascertain that there will be sufficient assets to protect the interests of any persons who may in future deal with the company in question.

F [15] In the first judgment, I have alluded to the factual background of the petitioner here. I did say that the petitioner is an investment holding company which does not carry on any trading or conduct any manufacturing activities. Dato' Azmil's affidavit that was affirmed on 11 June 2003 and as seen in encl 5 makes for an interesting reading material. In exh 'A-12' of encl 5, the balance sheet was exhibited and at pp 13-14 thereof the following facts may be garnered. That as at 31 December 2002, the company — referring to the petitioner, had fixed assets of RM1,200,000, with current assets of RM8,357,000 and current liabilities of RM3,026,000, thereby giving it net assets of RM1,205,331,000. Out of this sum, it is proposed to pay out a sum of RM235,281,818 and this leaves the company with the net current assets of over RM950,000,000 (see encl 2 — the affidavit of Dato' Azmil that was affirmed on 11 April 2003 annexing exh 'A-10' at p 469 thereto).

Conclusion

I [16] I must conclude that there are merits to the application in encl 1. So, I gave an order in terms of encl 1 at prayer (1), prayer 3(i), prayer 3(ii) and prayer (4) of para 10.

[17] By way of prayer (4) of para 10 of encl 1, the orders that I deem fit and necessary to make relate to prayer (2) of para 10 in encl 1. This order is necessary because the Companies Commission of Malaysia must know the exact reduction in capital of the petitioner as the company. However, it now transpired that the petitioner has issued warrants which can be converted into shares at any time (see the averments at paras 5 and 9 of encl1). The petitioner has to fix an entitlement date by which the warrant holders have to register themselves as shareholders in order to participate in the reduction of capital.

[18] Before an order is made in terms of prayer (1) of encl 1, there is no entitlement to a reduction of capital. That being the case, notwithstanding that I have agreed to allow an order in terms of prayer (1) of para 10 in encl 1, I must give another date for the hearing of prayer (2) thereof. For this purpose, I am guided by the case of in *Re Chelmsford Land Company Ltd.* Consequently, I gave the hearing of prayer (2) of para 10 in encl 1 on the 14 of October 2003.

Application allowed.

Reported by Sivapragasam Kumaran

A

B

C

D

E

F

G

H

I